IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
FIRST APPEAL NO.475 OF 1989
(Converted from Criminal Appeal No.239 of 1979)

Hiralal Jain,)
residing at 60, Mint Road,)
1st Floor, Bombay - 1.) .. Appellant

Vs.

1. The Director of Enforcement)
Janmabhoomi Chamber,)
1st Floor,)
Walchand Hirachand Marg,)
Bombay - 1.)

2. The State of Maharashtra.) .. Respondent
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Shri Sunil P.Padwaldesai holding for Shri H.A.Solkar for the Appellant.

None present for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &

ANOOP V. MOHTA, JJ.

DATED : 10th JUNE, 2005.

ORAL JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard the learned Advocate for the appellant. None present for the respondents. Perused the records.

2. At the outset, it pains to note that during the hearing of the matter, there was absolutely no assistance by or on behalf of the department of the Director of Enforcement, Mumbai, whose order has been sought to be challenged in the matter.

3. The appellant challenges the order of adjudication passed under the provisions of Foreign Exchange Regulation Act, 1973 read with the provisions of Foreign Exchange Regulation Act, 1947 confiscating the foreign exchange found in the premises of the appellant and imposing penalty on account of illegal possession thereof.

4. Facts leading to the case revealed from the records are that the officers of the Enforcement Directorate, Mumbai, raided the premises of the appellant on 6th January, 1972 and seized the foreign exchange consisting of pound 104 and 231.91 from the cavity which was found made behind the bathroom tiles in the said premises. At the time of seizure, the appellant was not present, though his Manager and nephew by name Devilal Jain was present. Consequent to the seizure of the foreign exchange as above, a show cause notice was issued to the appellant under

the provisions of Foreign Exchange Regulation Act, 1947 and adjudication proceedings were initiated consequent to the filing of the reply to the show cause notice. The foreign exchange was ordered to be confiscated and penalty of Rs.6,370/- was imposed. The defence of the appellant that a cavity behind the bathroom tiles was not made by him and that he was not aware about the storage of foreign exchange at the said place was disbelieved by the authority in the absence of any cogent evidence being produced by the appellant in that regard.

5. The matter was carried in appeal by the appellant before the appellate authority under the provisions of Foreign Exchange Regulation Act, 1973, which came to be dismissed by the impugned order. Hence, the present First Appeal.

6. It is also to be noted that the seizure of foreign exchange was effected on 6th January, 1972 and consequently the provisions of Foreign Exchange Regulation Act, 1947 were attracted. While applying the provisions of the said Act, the authority below ordered confiscation of the foreign exchange which was found in the illegal possession of the appellant and imposed penalty on him of Rs.6,370/-. The order was

passed in that regard on 29th September, 1976 and the appeal carried against the said order was disposed of by the appellate authority on 25th November, 1978. By that, the provisions of Foreign Exchange Regulation Act, 1973 were already in force.

7. Considering the facts of the case and the contentions sought to be raised in the appeal, it is apparent that the appellant has not been able to point out any question of law to be arising for determination in the matter by this Court.

8. The statutory provision comprised under Section 54 of the Foreign Exchange Regulation Act, 1973 clearly requires a question of law to arise for determination by the High Court in case of appeal against the decision of the appellate authority. In the absence of any question of law arising for consideration of this Court in the matter in hand, the same is liable to be dismissed on that ground itself.

9. Even otherwise, there is absolutely no substance in the grievance of the appellant. While on one hand, the appellant alleges lack of knowledge about storage of the foreign exchange at the relevant place and, on the other hand, disputes the authority

of the respondents to confiscate the foreign exchange so found and seized. Undoubtedly, the appellant has not been able to establish that he was in lawful possession of the said foreign currency. The provisions of law comprised under Foreign Exchange Regulation Act, 1947 as well as Foreign Exchange Regulation Act, 1973 and the Rules framed thereunder clearly empower adjudicating authority to confiscate illegally possessed the foreign exchange and to impose penalty, and therefore, no fault can be found with the decisions of the authorities below in that regard.

10. There being no case made out for interference by this Court in the impugned order, and therefore, the appeal fails and is hereby dismissed with no order as to costs.

(R.M.S.Khandeparkar, J)

(Anoop V. Mohta, J)